



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY  
DOCKET NO. 05-0003

IN THE MATTER  
OF  
JOSEF FRYER

## DISPOSITION AGREEMENT

The State Ethics Commission and Josef Fryer enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On September 29, 2004, pursuant to G.L. c. 268B, § 4(a), the Commission initiated a preliminary inquiry into possible violations of the conflict-of-interest law, G.L. c. 268A, by Fryer. The Commission has concluded its inquiry and, on May 5, 2005, found reasonable cause to believe that Fryer violated G.L. c. 268A, § 19.

The Commission and Fryer now agree to the following findings of fact and conclusions of law:

### Findings of Fact

Fryer has been the Town of Dover's municipal well inspector for approximately 20 years. As the well inspector Fryer is a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

Fryer is appointed well inspector by and reports to the Board of Health ("BOH").

As the well inspector, Fryer is a part-time employee. He does not have set hours; rather, he works on and is paid on a per-job basis. Depending on the number of inspections in a given year, Fryer's income as the well inspector has ranged from approximately \$3,000 to \$10,000 annually.

Fryer is a one-third owner of Dover Water Company ("Dover Water"), a private family business that supplies water services. His siblings, a brother and a sister, own the remaining two-thirds of the company. Dover Water provides water to approximately 500 homes in Dover. Fryer serves as the salaried superintendent for Dover Water. Fryer's sister runs Dover Water's day-to-day operations.

Dover Water's average customer's annual water bill is approximately \$520. Dover Water makes a profit of approximately \$60 per customer per year.<sup>1</sup>

Over the last several years, on average, two Dover Water customers a year applied to the BOH for permits to dig their own wells. If successful, these applicants would receive water from their own wells and would no longer do business with Dover Water. If unsuccessful, they would have to stay with Dover Water and continue to pay the company for their water.

These well applications from Dover Water customers, like all well applications, were filed with Fryer as the BOH agent under standard operating procedure. Fryer reviewed each application to make sure the proposed well complied with codes and regulations, primarily set-back regulations. Fryer stamped his approval once all of the basic information on the application conformed to the applicable regulations and the permit application moved forward to the BOH. Once the application had Fryer's stamp of approval, the homeowner arranged for a driller to come in. Fryer met with the driller at the work site to make sure that the actual well-placement matched the placement on the application. A pump test was done for water volume and water quality once the well was drilled. If the pump test passed, Fryer gave approval to connect the well to the house. When Fryer found a problem with the application or well, he asked the applicant for more information or to correct the issue. If the application did not conform to applicable regulations, it was up to the applicant to fix the problem or take the matter to the BOH directly. Fryer does not have the authority to deny a well permit; only the BOH can do so.

The BOH receives reports on Fryer's work but does not actively supervise him.

The BOH had general knowledge about Fryer's connection to Dover Water, but there were no written disclosures or determinations by the BOH allowing Fryer to participate as the town's well inspector in matters involving Dover Water customers. Fryer did not file any written disclosures specifically addressing his official involvement with applications involving Dover Water customers.

### **Conclusions of Law**

Section 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>2</sup> as such an employee in a particular matter<sup>3</sup> in which, to his knowledge, he or an immediate family<sup>4</sup> member has a financial interest.<sup>5</sup>

As the well inspector, Fryer is a municipal employee pursuant to G.L. c. 268A,  
§ 1.

A decision as to whether a well permit application complies with codes and regulations is a particular matter. The determinations at the site that the well-placement matches the placement on the application and the approval to connect the well to the house are also particular matters.

Fryer participated in such particular matters by reviewing the permit applications, inspecting the proposed well sites, determining whether the proposed wells complied with codes and regulations and approving the permit applications to move forward to the BOH.

Where Fryer's company stood to lose money each time a time a Dover Water customer applied for and received a permit to dig a well, Fryer had a financial interest in these particular matters. In addition, where his siblings own two-thirds of Dover Water, they also have a financial interest in such particular matters. Fryer knew of these financial interests when he so participated.

Accordingly, by so participating in these particular matters concerning Dover Water customers, Fryer repeatedly violated § 19.

The conflict-of-interest law provides an exemption that allows a municipal employee to participate if the municipal employee makes a full written disclosure to and receives a written determination in advance from his appointing authority, the BOH.<sup>6</sup> While the BOH members were aware that Fryer was somehow involved with Dover Water, no written disclosures or determinations were made nor did the BOH know of

the extent of Fryer's involvement with the company when he was participating as the well inspector in matters affecting Dover Water customers.

### Resolution

In view of the foregoing violations of G.L. c. 268A by Fryer, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Fryer:

- (1) that Fryer pay to the Commission the sum of \$2,000 as a civil penalty for repeatedly violating G.L. c. 268A, § 19;
- (2) that Fryer cease and desist from violating G.L. c. 268A, § 19 by either abstaining from participating in particular matters in which he, an immediate family member or Dover Water has a financial interest or by securing an exemption under § 19(b)(1); and
- (3) that Fryer waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE:** August 2, 2005

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<sup>1</sup> Dover Water prices, like all water business, are regulated by the Department of Telecommunications and Energy ("the DTE"). The DTE sets the water rates; Dover Water is allowed to make a 10-13% profit.

<sup>2</sup> "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

<sup>3</sup> "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

<sup>4</sup> "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters.

<sup>5</sup> "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

<sup>6</sup> Section 19(b)(1) provides an exemption when:

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the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.